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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 FILMKRAFT PRODUCTIONS INDIA
8 PVT LTD.,

9 Plaintiff,

10 v.

11 SPEKTRUM ENTERTAINMENT,
12 INC., et al.,

13 Defendants.

2:08-CV-1293 JCM (GWF)

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15 **ORDER**

16 Presently before the court is defendants Bina Shah's, Raj Shah's, and Spektrum
17 Entertainment, Inc.'s former attorney Duane Frizell's motion to adjudicate attorney's lien and reduce
18 attorney's lien to judgment. (Doc. #171). Responses were due by August 27, 2010. To date, no party
19 has filed any document related to the motion.

20 On November 13, 2010, movant Frizell made his first appearance in this court on behalf of
21 the defendants. (Doc. #57). Thereafter, on November 25, 2010, the court granted defendants' counsel
22 of record, Theodore Parker III's, motion to withdraw as attorney. Movant Frizell continued to
23 represent the defendants through April 15, 2010, when this court ultimately granted Frizell's motion
24 to withdraw as attorney of record (doc. #112). (Doc. #131).

25 Frizell now comes before the court stating that defendants are past due on invoices for
26 professional services rendered in the instant action. On August 9, 2010, movant served a notice of
27 lien for attorney's fees (doc. #147) in the amount of \$28,988.94 upon defendants by express mail.
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1 Movant alleges that, despite these efforts, defendants still refuse to pay for legal services rendered
2 on their behalf. Accordingly, Mr. Frizell has filed the instant motion.

3 **I. JURISDICTION**

4 This court has subject matter jurisdiction over the instant case pursuant to 28 U.S.C. § 1332,
5 because the parties are of diverse citizenship and the amount in controversy exceeds \$75,000. (Doc.
6 #1, compl. ¶ 1). The court also has supplemental jurisdiction over “all other claims that are so related
7 to claims in the action within such original jurisdiction that they form part of the same case or
8 controversy. . . .” 28 U.S.C. § 1367(a). Here, the court finds that the instant motion is so related to
9 the action at hand such that the exercise of supplemental jurisdiction would be proper.

10 **II. ATTORNEY’S LIEN**

11 Nevada recognizes two kinds of attorney’s liens: (1) a special “charging lien” created by
12 statute, which attaches to the judgment or settlement that the attorney obtained for the client, *see*
13 NRS 18.015; and (2) a common law “retaining lien,” which allows a discharged attorney to withhold
14 the client's file and other property until the court, at the request or consent of the client, adjudicates
15 the client's rights and obligations with respect to the lien, *Argentina Consol. Min. Co. v. Jolley Urga*
16 *Wirth Woodbury & Standish*, 216 P.3d 779, 784 (Nev. 2009). Each is discussed below in the context
17 of this motion.

18 **A. Charging Lien**

19 Although the movant characterizes his motion as arising under NRS 18.015, he has no basis
20 for asserting a charging lien, as the defendants’ answers and counterclaims were stricken. As
21 defendants will obtain no affirmative recovery in the underlying action, Frizell, as their former
22 attorney, will be unable to retain a charging lien on the underlying action.

23 **B. Retaining Lien**

24 Inasmuch as the instant motion requests adjudication of a retaining lien, the court is unable
25 to provide relief. The Nevada Supreme Court has held that “a retaining lien is a passive lien that
26 cannot be actively enforced by the attorney in judicial proceedings.” *Id.* (citing *Figliuzzi v. District*
27 *Court*, 890 P.2d 798, 801 (Nev. 1995)). Rather, the client determines whether it wants to extinguish
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1 the lien by requesting that the court compel delivery of the client's files in return for providing
 2 adequate security. *Id.* Until this time, "the attorney may keep possession of the former client's files[,]
 3 and the attorney's recourse is to file a separate action to recover for the services expended on behalf
 4 of the former client." *Id.*

5 Here, the clients-defendants have neither requested nor consented to the district court's
 6 adjudication of a retaining lien. Furthermore, the Nevada Supreme Court has rejected *Gordon v.*
 7 *Stewart*, 324 P.2d 234 (Nev. 1958), cited by the movant, to the extent that it held that the district
 8 court has "the power to resolve a fee dispute in the underlying action irrespective of whether the
 9 attorney sought adjudication of a lien." *Argentina*, 216 P.3d at 786.

10 Rather, the Nevada Supreme Court has held that in a situation like this where an attorney
 11 does not have an enforceable charging lien, and where a client does not move the court to resolve
 12 the retaining lien, "the proper method by which the attorney should seek adjudication of the fee
 13 dispute is an action against his or her former client *in a separate proceeding*." *Id.* at 787 (emphasis
 14 added). We find this precedent controlling under the facts of this case,¹ and decline to adjudicate the
 15 motion.

16 C. Fee Dispute as Incidental to the Underlying Action

17 To the extent that movant requests the court adjudicate the fee dispute outside of the above
 18 described lien context, the motion is also denied. The Nevada Supreme Court in *Argentina* rejected
 19 this approach: "[t]o the extent that the *Sarman* court held that a court has 'incidental jurisdiction'
 20 to resolve an attorney-client fee dispute regardless of whether a valid lien existed, we conclude that
 21 the *Sarman* opinion is overbroad." 216 P.3d at 785.

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 23 ¹ The court notes that the holding in *Argentina*, where the court declined to adjudicate the
 24 fee dispute, was based in part on the fact that the client in that case had also asserted a legal
 25 malpractice claim against the fee-seeking attorney. While that factor is not present here, the court
 26 concludes that its absence is not dispositive. In *Argentina*, the court first stated that "absent an
 27 enforceable charging lien or the client's request or consent to the district court's adjudication, the
 28 district court is without jurisdiction to adjudicate an attorney-client fee dispute in the underlying
 action." 216 P.3d at 781. Only then did the court go on to list the malpractice action as an
 aggravating factor specific to that case, stating it is "particularly inappropriate to summarily
 adjudicate a fee dispute" in that scenario. *Id.*


1 The *Argentina* court also rejected a similar holding in the *Gordon* opinion cited by the
2 movant: “[i]n reviewing the *Gordon* opinion, however, like the *Sarman* court, the *Gordon* court
3 conflated statements made in *Earl v. Las Vegas Auto Parts*[, 307 P.2d 781 (Nev. 1957)] . . . and
4 improperly extended the *Earl* court’s holding.” *Id.* at 785–86. Rather, it is only in the charging lien
5 context that a court has incidental jurisdiction to resolve a fee dispute. *Id.* at 786.

6 Here, as in *Gordon*, which the *Argentina* court overruled, there is no charging lien, and the
7 attorney voluntarily withdrew as counsel of record (*see* doc. #112). Furthermore, the clients-
8 defendants have not consented to or requested the court’s adjudication of a retaining lien. Thus, this
9 court is without jurisdiction to adjudicate the instant motion.

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that movant Duane Frizell’s
12 motion to adjudicate attorney’s lien and reduce attorney’s lien to judgement (doc. #171) is DENIED.

13 DATED this 2nd day of December, 2010.

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16 UNITED STATES DISTRICT JUDGE
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